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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/764,662   | 01/26/2004  | Stuart T. Schwab     | T36-231-010             | 8802             |
| 7590   | 03/01/2006  |                      |                         | EXAMINER         |
| John L. Sigalos<br>Carillon Towers<br>Suite 402W<br>13601 Preston Road<br>Dallas, TX 75240 |             |                      |                         | LOPEZ, CARLOS N  |
|  |             |                      | ART UNIT                | PAPER NUMBER     |
|  |             |                      | 1731                    |                  |
|  |             |                      | DATE MAILED: 03/01/2006 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |               |
|------------------------------|-----------------|---------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)  |
|                              | 10/764,662      | SCHWAB ET AL. |
|                              | Examiner        | Art Unit      |
|                              | Carlos Lopez    | 1731          |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 19-22 is/are withdrawn from consideration.
- 5) Claim(s) 1-5 is/are allowed.
- 6) Claim(s) 6-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse of claims 1-18 in the reply filed on 1/17/06 is acknowledged. The traversal is on the ground(s) that there is no serious burden, no separate search, and applicant's request to make of record to evidence showing metal/ceramic composites as claimed can be made other process such as heating or infrared radiation. This is not found persuasive because as noted in MPEP section 803, "For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02." Since applicant has not rebutted the prima facie shown by appropriate showing or evidence as noted in MPEP 803, except for the argument noted above, applicant's argument is found unpersuasive.

In regards to applicant's request to show evidence, as noted in MPEP 803 subheading "Guidelines", the burden is on the applicant, not the Examiner, to show through evidence or "appropriate showings" a rebuttal of serious burden. Applicant is thus invited to rebut the prima facie established by the Examiner by appropriate showings or evidence by the applicant as explicitly noted in MPEP 803.

The requirement is still deemed proper and is therefore made FINAL.

***Priority***

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It appears that due to a typing error, applicant is claiming priority to US Application No. 09/929,823 instead of the intended US Application No. 09/929,873. It is requested that applicant verify and correct this information.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6 and 11, there is no connection of the phrase "found to be effective susceptors" with the disclosed types of suceptor materials. Additionally, the term "effective" in claim 8 is a relative term, which renders the claim indefinite. The term "effective" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant is invited to delete "found to be effective suceptor."

In claim 8-9 and 17, it is not clear how applicant defines "metallic fashion". Applicant is invited to delete the phrase "metallic fashion."

In claim 14, the phrase "metal element" lacks antecedent basis. Additionally, it is not clear, to what element, the fiber reinforcement or the ceramic precursor, is the

tubular metallic element is associated since the phrase "therewith" can encompass any of the mentioned elements.

***Allowable Subject Matter***

Claims 1-5 are allowed

The following is a statement of reasons for the indication of allowable subject matter: The primary reason for allowance is that the cited prior art fails to disclose or reasonably suggest a method of making a tubular ceramic/metal composite by associating a polymeric ceramic precursor and at least one tubular metallic element to form a preceramic composite and thereafter pyroloizing the composite with high frequency microwave radiation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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